

AMENDED IN SENATE APRIL 13, 2004

SENATE BILL

No. 1768

Introduced by Senator Romero

February 20, 2004

An act amend ~~Section 2601 of the Penal Code, relating to inmates~~
Sections 6126 and 6129 of the Penal Code, relating to the Inspector General.

LEGISLATIVE COUNSEL'S DIGEST

SB 1768, as amended, Romero. ~~Inmates~~ *The Inspector General.*

Existing law provides that there is an independent office of the Inspector General, responsible for reviewing departmental policy and procedures and conducting investigations of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Youth and Adult Correctional Agency, as requested by the Secretary of the Youth and Adult Correctional Agency or a Member of the Legislature, or upon his or her own accord. Existing law requires these entities to refer matters involving criminal conduct to the proper law enforcement authorities for further action. Generally, under existing law, district attorneys, under the supervision of the Attorney General, are charged with prosecuting crime.

This bill would provide that the Inspector General shall also have the authority to prosecute employees of those entities who have engaged in criminal misconduct after his or her independent evaluation of the sufficiency of the evidence referred to him or her to sustain a conviction. This bill would also provide that if the Office of Inspector General

refuses to accept the case, it shall refer the matter to the Attorney General.

~~Existing law provides that persons sentenced to state prison shall have certain civil rights, including the right to inherit, own, sell, or convey real or personal property and to correspond, confidentially, with any member of the state bar or public official, as specified.~~

~~This bill would make a technical, nonsubstantive change to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

~~SECTION 1. — Section 2601 of the Penal Code is amended to~~

SECTION 1. Section 6126 of the Penal Code is amended to read:

6126. (a) The Inspector General shall be responsible for reviewing departmental policy and procedures for conducting audits of investigatory practices and other audits, as well as conducting investigations of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Youth and Adult Correctional Agency, as requested by either the Secretary of the Youth and Adult Correctional Agency or a Member of the Legislature, pursuant to the approval of the Inspector General under policies to be developed by the Inspector General. The Inspector General may, under policies developed by the Inspector General, initiate an investigation or an audit on his or her own accord.

(b) Upon completion of an investigation or audit, the Inspector General shall provide a response to the requester.

(c) The Inspector General shall, during the course of an investigatory audit, identify areas of full and partial compliance, or noncompliance, with departmental investigatory policies and procedures, specify deficiencies in the completion and documentation of investigatory processes, and recommend corrective actions, including, but not limited to, additional training with respect to investigative policies, additional policies, or

changes in policy, as well as any other findings or recommendations that the Inspector General deems appropriate.

(d) The Inspector General shall have the authority to prosecute employees of the entities listed in subdivision (a) who have engaged in criminal misconduct. In considering whether to prosecute a case, the Inspector General shall make an independent evaluation of the evidence of criminal conduct being referred to him or her pursuant to subdivision (f) of Section 6129 and shall make a de novo determination whether to accept the case based upon whether there is sufficient evidence to sustain a conviction. Criminal misconduct may include, but is not limited to, and of the following:

(1) Use of excessive force.

(2) Use of force resulting in injury or death.

(3) Suicide or attempted suicide.

(4) Unattended death.

(5) Sexual assault.

SEC. 2. *Section 6129 of the Penal Code is amended to read:*

6129. (a) (1) For purposes of this section, “employee” means any person employed by the Youth and Adult Correctional Agency, the Department of Corrections, the Department of the Youth Authority, the Board of Corrections, the Board of Prison Terms, the Youthful Offender Parole Board, or the Inspector General.

(2) For purposes of this section, “retaliation” means intentionally engaging in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee who has done either of the following:

(A) Has disclosed or is disclosing to any employee at a supervisory or managerial level, what the employee, in good faith, believes to be improper governmental activities.

(B) Has cooperated or is cooperating with any investigation of improper governmental activities.

(b) (1) Upon receiving a complaint of retaliation from an employee, the Inspector General may commence an investigation. All investigations conducted pursuant to this section shall be performed, where applicable, in accordance with the requirements of Chapter 9.7 (commencing with Section 3300) of Title 1 of Division 4 of the Government Code.

(2) When investigating a complaint, in determining whether retaliation has occurred, the Inspector General shall consider, among other things, whether any of the following either actually occurred or were threatened:

(A) Unwarranted or unjustified staff changes.

(B) Unwarranted or unjustified letters of reprimand or other disciplinary actions, or unsatisfactory evaluations.

(C) Unwarranted or unjustified formal or informal investigations.

(D) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are unprofessional, or foster a hostile work environment.

(E) Engaging in acts, or encouraging or permitting other employees to engage in acts, that are contrary to the rules, regulations, or policies of the workplace.

(3) Upon authorization of the complainant employee, the Inspector General may release the findings of the investigation of alleged retaliation to the State Personnel Board for appropriate action.

(c) Any employee at any rank and file, supervisory, or managerial level, who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against another employee, pursuant to paragraph (2) of subdivision (a), shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is taken, the State Personnel Board shall invoke adverse action proceedings as provided in Section 19583.5 of the Government Code.

(d) (1) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay, and shall be liable in an action for damages brought against him or her by the injured party. If the State Personnel Board determines that a lesser period of suspension is warranted, the reasons for that determination must be justified in writing in the decision.

(2) Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If liability has

1 been established, the injured party also shall be entitled to
2 reasonable attorney's fees as provided by law.

3 (e) Nothing in this section shall prohibit the employing entity
4 from exercising its authority to terminate, suspend, or discipline
5 an employee who engages in conduct prohibited by this section.

6 (f) The Inspector General, the Youth and Adult Correctional
7 Agency, the Department of the Youth Authority, the Department
8 of Corrections, the Board of Corrections, the Youthful Offender
9 Parole Board, and the Board of Prison Terms shall refer matters
10 involving criminal conduct to the proper law enforcement
11 authorities in the appropriate jurisdiction for further action. The
12 entity making a referral to the local district attorney shall also
13 notify the Attorney General *and Inspector General* of the action.
14 If the local district attorney refuses to accept the case, he or she
15 shall notify the referring entity who shall subsequently refer the
16 matter to the *Office of Inspector General which shall confer and*
17 *consult with the Attorney General. If the Office of Inspector*
18 *General refuses to accept the case, the Inspector General shall*
19 *refer the matter to the Attorney General.* If the local district
20 attorney has not acted on the matter, the referring entity shall notify
21 the *Office of Inspector General and the Attorney General within*
22 *60 days.* It is the intent of the Legislature that the Department of
23 Justice avoid any conflict of interest in representing the State of
24 California in any civil litigation that may arise in a case in which
25 an investigation has been or is currently being conducted by the
26 Bureau of Investigation by contracting when necessary for private
27 counsel.

28 (g) Upon the completion of any investigation, the Inspector
29 General shall prepare a written report, which shall be held as
30 confidential and disclosed in confidence, only to the Secretary of
31 the Youth and Adult Correctional Agency, the Governor, and the
32 appropriate director or law enforcement agency. A summary of the
33 report's findings and conclusions shall be made available, upon
34 request, to the person who requested the investigation, the person
35 or persons who were the subjects of the investigation, and to any
36 Member of the Legislature.

37 (h) Nothing in this section shall preclude the office of the
38 Inspector General from following all applicable laws regarding
39 confidentiality, including, but not limited to, the California Public
40 Records Act, the Public Safety Officers Procedural Bill of Rights,

1 the Information Practices Act of 1977, the Confidentiality of
2 Medical Information Act, and the provisions of Section 832.7
3 relating to the disposition notification for complaints against peace
4 officers.

5 read:

6 ~~2601.—Subject only to the provisions of that section, each~~
7 ~~person described in Section 2600 shall have the following civil~~
8 ~~rights:~~

9 ~~(a) Except as provided in Section 2225 of the Civil Code, to~~
10 ~~inherit, own, sell, or convey real or personal property, including~~
11 ~~all written and artistic material produced or created by the person~~
12 ~~during the period of imprisonment. However, to the extent~~
13 ~~authorized in Section 2600, the Department of Corrections may~~
14 ~~restrict or prohibit sales or conveyances that are made for business~~
15 ~~purposes.~~

16 ~~(b) To correspond, confidentially, with any member of the~~
17 ~~State Bar or public official, provided that the prison authorities~~
18 ~~may open and inspect incoming mail to search for contraband.~~

19 ~~(c) (1) To purchase, receive, and read any and all newspapers,~~
20 ~~periodicals, and books accepted for distribution by the United~~
21 ~~States Post Office. Pursuant to this section, prison authorities may~~
22 ~~exclude any of the following matter:~~

23 ~~(A) Obscene publications or writings, and mail containing~~
24 ~~information concerning where, how, or from whom this matter~~
25 ~~may be obtained.~~

26 ~~(B) Any matter of a character tending to incite murder, arson,~~
27 ~~riot, violent racism, or any other form of violence.~~

28 ~~(C) Any matter concerning gambling or a lottery.~~

29 ~~(2) Nothing in this section shall be construed as limiting the~~
30 ~~right of prison authorities to do the following:~~

31 ~~(A) Open and inspect any and all packages received by an~~
32 ~~inmate.~~

33 ~~(B) Establish reasonable restrictions as to the number of~~
34 ~~newspapers, magazines, and books that the inmate may have in his~~
35 ~~or her cell or elsewhere in the prison at one time.~~

36 ~~(d) To initiate civil actions, subject to a three dollar (\$3) filing~~
37 ~~fee to be collected by the Department of Corrections, in addition~~
38 ~~to any other filing fee authorized by law, and subject to Title 3a~~
39 ~~(commencing with Section 391) of the Code of Civil Procedure.~~

40 ~~(e) To marry.~~

- 1 ~~(f) To create a power of appointment.~~
- 2 ~~(g) To make a will.~~
- 3 ~~(h) To receive all benefits provided for in Sections 3370 and~~
- 4 ~~3371 of the Labor Code and in Section 5069.~~

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